

APPEAL NO. 170835  
FILED MAY 18, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 28, 2017, with the record closing on March 15, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the compensable injury of (date of injury), does not extend to post-concussion syndrome, shortness of breath, dizziness, nausea, chest pain, heart-related issues, left shoulder pain, back pain, apnea, aneurysm, or migraine headaches. The appellant (claimant) appealed, arguing he should be allowed an opportunity to present evidence regarding the merits of his case. The respondent (self-insured) responded, urging affirmance of the disputed extent-of-injury determination.

DECISION

Reversed and remanded.

A CCH was held on February 28, 2017, to decide the disputed issue of extent of injury. The claimant did not appear at the CCH and a 10-day letter dated February 28, 2017, was sent to the claimant at his last known address. The claimant failed to respond to the 10-day letter and the hearing officer closed the record on March 15, 2017. The hearing officer issued a decision on March 23, 2017, that was unfavorable to the claimant.

On appeal, the claimant states he was admitted to the hospital on February 27, 2017, for chest pains and was diagnosed with the flu. The claimant contends he was not aware of the 10-day letter. The claimant contends he was not physically able to attend the CCH.

In Appeals Panel Decision (APD) 042634, decided November 29, 2004, the Appeals Panel noted that the purpose of the 10-day letter process is to give the nonappearing party the opportunity to meaningfully participate in the dispute resolution process. In APD 020273, decided March 29, 2002, the claimant made a number of factual allegations in her appeal regarding good cause for failing to attend the CCH and her attempts to respond to the 10-day letter, and the Appeals Panel stated that it was not in a position to evaluate the credibility of the claimant in regard to those matters and thus, remanded the case to the hearing officer to take evidence concerning the claimant's allegations and to permit the claimant to present evidence on the merits of her claim at the CCH on remand.

In the instant case, the claimant makes factual allegations that, if true, could constitute a basis for good cause for the claimant's failure to attend the CCH on February 28, 2017, or respond to the 10-day letter dated February 28, 2017. As in APD 020273, *supra*, the case is remanded to the hearing officer to take evidence concerning the claimant's allegations and to permit the parties to present evidence on the merits of the claim at the CCH on remand.

Accordingly, we reverse the hearing officer's determinations that the compensable injury of (date of injury), does not extend to post-concussion syndrome, shortness of breath, dizziness, nausea, chest pain, heart-related issues, left shoulder pain, back pain, apnea, aneurysm, or migraine headaches. We remand this case to the hearing officer to allow the claimant an opportunity to participate in the dispute resolution process, and present evidence if he wishes to do so.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **CITY OF HOUSTON (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**ANNA RUSSELL-CITY SECRETARY  
900 BAGBY  
HOUSTON, TEXAS 77002.**

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

K. Eugene Kraft  
Appeals Judge

---

Carisa Space-Beam  
Appeals Judge